

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 29th day of February, two thousand eight.

PRESENT:

HON. RALPH K. WINTER,
HON. GUIDO CALABRESI,
HON. RICHARD C. WESLEY,
Circuit Judges.

VITOR LASKU,
Petitioner,

v.

MICHAEL B. MUKASEY,
UNITED STATES ATTORNEY GENERAL,¹
Respondent.

07-2852-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as the respondent in this case.

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2 **FOR PETITIONER:** **Andrew P. Johnson, New York, New**
3 **York.**

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5 **FOR RESPONDENT:** **Jeffrey S. Bucholtz, Acting**
6 **Assistant Attorney General, Civil**
7 **Division; Mary Jane Candaux,**
8 **Assistant Director; Edward E.**
9 **Wiggers, Trial Attorney, Office of**
10 **Immigration Litigation, U.S.**
11 **Department of Justice, Washington,**
12 **D.C.**
13

14 UPON DUE CONSIDERATION of this petition for review of a
15 decision of the Board of Immigration Appeals ("BIA"), it is
16 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
17 review is DENIED in part and DISMISSED in part.

18 Vitor Lasku, a native and citizen of Albania, seeks
19 review of a June 7, 2007 order of the BIA affirming the
20 September 27, 2005 decision of Immigration Judge ("IJ")
21 Michael W. Straus, denying his application for asylum and
22 withholding of removal. *In re Vitor Lasku*, No. A96 266 070
23 (B.I.A. Jun. 7, 2007), *aff'g* No. A96 266 070 (Immig. Ct.
24 Hartford Sep. 27, 2005). We assume the parties' familiarity
25 with the underlying facts and procedural history of this
26 case.

27 When the BIA adopts the decision of the IJ and
28 supplements the IJ's decision, this Court reviews the
29 decision of the IJ as supplemented by the BIA. *See Yan Chen*

1 *v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). This Court
2 reviews the agency's factual findings under the substantial
3 evidence standard, treating them as "conclusive unless any
4 reasonable adjudicator would be compelled to conclude to the
5 contrary." 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v.*
6 *INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part*
7 *on other grounds by Shi Liang Lin v. U.S. Dep't of Justice*,
8 494 F.3d 296 (2d Cir. 2007) (en banc). However, we will
9 vacate and remand for new findings if the agency's reasoning
10 or its fact-finding process was sufficiently flawed. *Cao He*
11 *Lin v. U.S. Dep't of Justice*, 428 F.3d 395, 406 (2d Cir.
12 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir.
13 2004). The Court reviews *de novo* questions of law and the
14 application of law to undisputed fact. See, e.g., *Secaida-*
15 *Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

16 As an initial matter, we note that we are without
17 jurisdiction to review the agency's determination that
18 Lasku's asylum claim was untimely where he fails to raise a
19 constitutional claim or a question of law. 8 U.S.C.
20 §§ 1158(a)(3), 1252(a)(2)(D).

21 We further find that the agency properly determined
22 that there has been a fundamental change in circumstances in
23 Albania such that, even if Lasku suffered past persecution,

1 he would not benefit from a presumption of a well-founded
2 fear of persecution. JA at 2-3; See 8 C.F.R.
3 § 1208.16(b)(1)(I); *Hoxhallari v. Gonzales*, 468 F.3d 179 (2d
4 Cir. 2007). While Lasku's claim was based on alleged
5 persecution he suffered as a Democratic Party political
6 activist, the BIA found that "Albania's current prime
7 minister, elected in 2005, is a member of the Democratic
8 Party," the "State Department indicates that 'neither the
9 Government nor the major political parties engage in
10 politics of abuse or coercion against their political
11 opponents,'" and "the most recent Country Reports . . . cite
12 few, if any, instances of politically motivated violence."
13 Therefore, the agency's finding that circumstances in
14 Albania have fundamentally changed is supported by
15 substantial evidence and its denial of Lasku's withholding
16 of removal claim was proper.

17 Finally, Lasku's CAT claim necessarily fails where it
18 was based upon the same factual predicate as his withholding
19 of removal claim. See *Paul v. Gonzales*, 444 F.3d 148, 156
20 (2d Cir.2006); 8 C.F.R. § 1208.16(c)(3)(ii)-(iv) (for CAT
21 relief, country conditions must be considered to determine
22 the likelihood of torture upon removal).

23 For the foregoing reasons, the petition for review is

1 DENIED in part and DISMISSED in part. As we have completed
2 our review, any stay of removal that the Court previously
3 granted in this petition is VACATED, and any pending motion
4 for a stay of removal in this petition is DISMISSED as moot.
5 Any pending request for oral argument in this petition is
6 DENIED in accordance with Federal Rule of Appellate
7 Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

8 FOR THE COURT:
9 Catherine O'Hagan Wolfe, Clerk
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11 By: _____